

Analysis of Recent Amendments in GST law

- CA Ravi Kumar Somani



Coverage of the PPT

Extension of due dates



Waiver of late fees in respect of delay in filing of returns to be furnished

Changes in the format of Annual Return (FORM GSTR-9) and reconciliation statement (FORM GSTR-9C)

Additions in services covered under reverse charge

Amendment in CGST Rules



Rate changes and exemptions with respect to goods and services

Clarifications on various aspects

Amendment in IGST Rules regarding the place of supply of services falling in more than one state

Extension in due dates

- Extension - Due date for availing ITC on the invoices or debit notes relating to FY 2017-18 upto **31-Mar-2019**.
 - *condition appearing in GSTR-2A*
- Extension in time to make amendments **in details furnished in Form GSTR-1 pertaining to financial year 2017-18**
- *till the **due date** of filing of the return for the month of **Mar'19** or for the quarter Jan '19 to Mar '19.*
 - *Subsequently, the differential tax payment, if any, is allowed to be made through the GSTR-3B of months October 20'18 to March 20'19.*
 - ***Applicable interest is required to be paid***

Extension in due dates

- ROD is to make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder,
- ROD is to be issued to remove the difficulty and not to create one;
- Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.
- Whether 3B a return under section 39
- Amendment in GSTR 3B whether available..?
- Error or omission – whether include adjustment of any taxes excess paid;
- ITC on imports through BOE
- Details uploaded as B2C by the supplier
- Is law different for the period Jul 17 to Sep 18 and Oct 18 to Mar 19 for availing ITC for FY 2017 18
- Complete mapping of credits through GSTR 2A

Extension in due dates (Contd..)

- Due Date for **GSTR-9, GSTR-9A, GSTR-9C** for the financial year 2017-18 has been extended up to **30-Jun-19**.

Description	Extension date
Availment of ITC for the FY 17-18 (provided that supplier should furnish details in GSTR 1)	31-Mar-19
Amendments in GSTR 1	31-Mar-19
Due date for filing Annual return & GST Audit	30-Jun-19
Due date for filing GSTR 8	31-Jan-19
Due Date for filing GSTR 7 (TDS Return for OCT 18 to Dec 18)	28-Feb-19
Due Date for Filing TRAN 2	30-Jun-19

Extension of time limits for various forms

Notification no.	Name of the Form	To be filed by	Period	Previous Due Date	Revised Due Date
67/2018	Details for activating Migration to Nodal Officer	Persons who have been granted provisional identification (PID) number only till 31.12.2017 but couldn't migrate	NA	31-Aug-18	31-Jan-19
67/2018	E-mail to <u>migration@gstn.org.in</u>	Persons who have been granted PID (under special migration procedure) and who have filed GST REG-01 and obtained the ARN, a new GSTIN and a new access code	NA	30-Sept-18	28-Feb-19

Extension of time limits for various forms (Contd..)

Notification no.	Name of the Form	To be filed by	Period	Previous Due Date	Revised Due Date
68/2018, 69/2018 & 70/2018	Form-GSTR-3B	Persons who have been granted provisional identification PID number (under special migration procedure)	Jul' 17- Feb' 19	31-Dec-18 (for Jul'17 to Nov'18)	31-Mar- 19
71/2018	Form-GSTR-1	Persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, and who has been granted PID number (under special migration procedure)	Jul' 17- Dec' 18	31-Dec-18 (for Jul' 17 to Sept' 18)	31-Mar-19

Extension of time limits for various forms(Contd..)

Notification no.	Name of the Form	To be filed by	Period	Previous Due Date	Revised Due Date
72/2018	Form-GSTR-1	Persons having aggregate turnover of more than 1.5 crore rupees in the preceding FY or current FY , & who has been granted PID number (under special migration procedure)	Jul'17 to Frb'19	31-Dec-18 (for Jul '17 to Nov '18)	31-Mar-19
78/2017	Form ITC-04	Principals who were dispatching goods to a job worker	Jul'17 to Dec' 18	31-Dec-18 (for Jul' 17 to Sept' 18)	31-Mar-19

TDS excluded for inter Government supplies

Excluded supply of goods or services or both between following persons from provisions of TDS under sec 51 of the CGST Act:

1. A department or establishment of CG/SG.
2. Local Authority
3. Governmental Agencies
4. Persons notified by Govt. which are as follows:
 - (a) An authority or a board or any other body,
 - (i) Set up by an Act of Parliament or a State Legislature; or
 - (ii) Established by any Government,
With 51% or more participation by way of equity or control, to carry out any function;
 - (b) Society established by the CG or the SG or a Local Authority under the Societies Registration Act, 1860;
 - (c) Public sector undertakings.

Waiver of late fees

Type of return	Return period	Filed between the period
GSTR 1	Jul'17-Sept'18	22 nd Dec'18 to 31 st Mar'19
GSTR 3B	Jul'17-Sept'18	22 nd Dec'18 to 31 st Mar'19
GSTR 4	Jul'17-Sept'18	22 nd Dec'18 to 31 st Mar'19

What About the late fee already paid?!!

Further extension given for filing upto March 2019

Provided further that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22nd December, 2018 to 31st March, 2019.

Cross Empowerment to officers

- The Principal Commissioner and Commissioner of Central Tax (and officers subordinates to him) have been cross empowered to exercise jurisdiction over territorial jurisdiction of other Principal Commissioner or Commissioner of Central Tax falling within the jurisdiction of same Principal Chief or Chief Commissioner with respect to adjudication under Section 73, 74, 75 and 76 of the CGST Act. Although such jurisdiction shall be subject to the assignment by Board.
- With effect from this notification, the powers of the Central Tax officer has been extended to throughout the territorial jurisdiction of his corresponding Principal Chief Commissioner/ Chief Commissioner of Central Tax.

Commissioner to be empowered to extend time limit for return of goods sent for job work

- Presently there is time limit of receiving

Type	Time limit
Inputs	1 Yr
Capital Goods	3 Yrs

- Now Commissioner is empowered to extend time limit for return for a **further period.**

Type	Time limit
Inputs	1 Yr
Capital Goods	3 Yrs

- Beneficial in cases where the activities undertaken by Job worker takes **longer period** of time so that there is **no need of sending back** the goods to principle and receiving back.

Changes in Returns

Amendments w.r.t GSTR 9

- All supplies effected during year 2017-18 to be reported in GSTR-9. The heading of the Part-II has been amended whereby the terminology “**declared in the return filed during the year**” has been omitted. Consequent to such amendment, **all supplies effected in the year 2017-18 to be reported in the Annual Return.**
- GSTR-1 and GSTR-3B to be filed before filing of GSTR-9.
- **Additional liability** to be paid through Form DRC-03. Taxpayers shall be required to select “Annual Return” in the drop down provided in DRC-03. Liability can only be paid through electronic **cash ledger.**
- The heading of Part-III has been changed from “Details of ITC as declared in returns filed during financial year” to the “**Details of ITC for the financial year**”.

Amendments w.r.t GSTR 9

- In Table 5C – Supplies on which tax is to be paid by the recipient under RCM now the supplier is not required to disclose the tax amount.
Only the taxable value shall be disclosed in this Table.
- **Table 13 shall include** any ITC reversed in the FY17-18 as per proviso to 16(2) (delay in payment to vendor beyond 180 days) but was **reclaimed in the FY18-19.**
- Table 8E & 8F shall now include amounts not disclosed in GSTR-2A.
Now, the supplier is required to disclose the credit not availed in GSTR-3B and ineligible credit as per GSTR-3B in this table.
- Table 18 – HSN wise summary of inward supplies
It has been clarified that HSN summary is required to be disclosed for only those **supplies that independently accounts for 10% or more** of total value of inward supplies.
- ITC availment not to be permitted through GSTR-9

Amendments w.r.t GSTR 9C

- Table 5 - Corrections have been done by substituting (+) in 5E and (-) in 5J of Part-A of GSTR-9C. These changes pertain to disclosure of credit notes in the GSTR-9C. **Earlier, there were mention of wrong sign (+/-) which has not been rectified.**
- GSTR-1 and GSTR-3B to be filed before filing of GSTR-9C
- Additional liability pointed out by auditor in the course of certification of reconciliation statement **to be paid through Form DRC-03**

Reversal of wrongly availed *CENVAT* credit through FORM GSTR-3B ?

- Earlier: Circular No. 58/32/2018 dated 04.09.2018
Taxpayers may reverse the wrongly availed credit through Table 4(B)(2) of FORM GSTR-3B along with applicable interest and penalty
- Presently: Circular No. 88/07/2019-GST dated 01.02.2019
*All liabilities may be discharged by the taxpayers, either voluntarily in FORM GST DRC-03
or may be recovered vide order uploaded in FORM GST DRC-07, and payment against the said order shall be made in FORM GST DRC-03.*
- **The alternative method of reversing the credit through FORM GSTR-3B would no longer be available to taxpayers.**
- **The applicable interest and penalty shall also be paid in FORM GST DRC-03.**

Details of inter-State supplies made to URD persons in GSTR -3B & GSTR -1 (Circular No. 89/08/2019-GST)

- Inter-State supplies to unregistered persons, composition taxable persons and UIN holders disclosure along with **details of place of supply.**
 - a. Table 3.2 of GSTR-3B, and
 - b. Table 7B of GSTR-1
- Non-mentioning of the info, issues:
 - ✓ Non-apportionment of the due amount of IGST to State where such supply takes place;
 - ✓ Mis-match in quantum of goods/services supplied in a State vis-à-vis amount of IGST apportioned between Centre & that State.
- Non-compliance of the said provision will attract penalty under sec 125 i.e. penalty up to Rs. 25,000/-.

Clarification regarding supply of warehoused goods during the period July'2017 to March'2018 (Circular No. 91/10/2019-GST)

- Supply of warehoused goods while deposited in custom bonded warehouses are inter-State supply as per section 7(2) of the IGST Act, 2017.
- But, due to non-availability of facility on common portal, suppliers have reported these as intra-State supplies & discharged CGST +SGST instead of IGST.
- *Circular: one-time exception, suppliers who have paid CGST +SGST during the said period, would be **deemed** to have complied with provisions of law provided that amount paid **equals to IGST***

Changes in RCM

Services included in RCM

Nature of Service	Service Provider	Person liable to pay tax
Business facilitating services	Business Facilitator (BF)	A banking company, located in the taxable territory
Services provided by the agent of business correspondent to business correspondent	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory

Notification no. 29/2018 – Central tax rate

Security services covered in RCM

Nature of Service	Service Provider	Person liable to pay tax
<p>Security services (supply of security personnel) provided to a registered person N/A to:</p> <p><i>(1) Persons registered for only TDS</i></p> <ul style="list-style-type: none"> - <i>Department/establishment of CG, SG or UT</i> - <i>Local authority</i> - <i>Government agencies</i> <p><i>(2) Persons registered under composition scheme}</i></p>	<p>Any person other than a body corporate</p>	<p><i>A registered person, located in the taxable territory</i></p>

Notification no. 29/2018 – Central tax rate

Only on security charges?

- Not merely on the service charges
- Tax has to be paid under reverse charge mechanism on
- Gross amount charged (security personnel cost+PF+ESI+service charges+ other charges) by security service providers

No RCM on GTA services provided to specified entities

- No RCM provision would be applicable if **Goods Transport Agency** provide any services to following entities **when** recipient of supply have taken registration only for the purpose of making compliance of TDS provisions.
 1. Department or Establishment of the Central Government or State Government or Union Territory; or
 2. Local authority ; or
 3. Governmental agencies
- **NOTE :** Services provided by GTA to above specified persons are neither taxable under RCM nor under forward charge as exemption is provided for the same.

Levy of GST on inward supplies from URD

- Government has already deferred the applicability of RCM till September 2019- *presently rescinded (vide notification no. 1/2019 – Central Tax (rate))*
- Future it would be confined only to (Government would notify):
 - A class of registered persons
 - Specified categories of goods or services
 - Nothing has been notified in this regard till now

Changes in CGST Rules

Changes in CGST Rules 2017

Clarification regarding TDS/TCS registration:

- A person required to pay TDS/TCS may be required to take registration in a State where he does not have place of business.
- Simplified registration format :**to provide that such person need not own any place in such State where he intends to take registration.**
- Obtain registration based on his registration in the principal State in which he is registered (say Haryana) & provide the details of additional State in which registration is sought to be obtained (say Gujarat), where no physical place exists.
- Note: Yet to be effective on portal

Changes in CGST Rules 2017

Clarification in relation to ITC-04 format:

- Details of challans by which goods are **sent by one job worker to the other job worker are not required to be disclosed in the ITC-04** as per the new format.

Contents of electronic Invoice or Bill of supply:

- Signature or digital signature of supplier or authorized representative of supplier not required on electronically issued invoice or Bill of Supply so long as such invoice is issued in accordance with Information Technology act.

“this is computer generated invoice and does not require signature”

Changes in CGST Rules 2017

Refund application (shipping bill) for IGST on export of goods eligible on filing departure manifest

- Refund application shall be deemed to be filed, when person in charge of conveyance carrying export goods duly *files a departure manifest or an export manifest or an export report.*
- In case of export of goods on payment of IGST, the refund is allowed when the *export manifest* is filed by the person in charge of the conveyance.
- However, there was amendment in Customs Act w.e.f. 28.3.2018 pursuant to which a reference was made to *departure manifest* also in addition to export manifest or export report.

The amendment has been proposed in the Rule to make it at par with the customs provisions.

Changes in CGST Rules 2017

Audit under Sec 65

- Period of audit has been rectified as a financial year or **part thereof or multiples thereof.**
- Corrective amendment - clarified dept may undertake audit for complete financial year or **part thereof also.**

Changes in CGST Rules 2017

Non-filers of return not able to furnish information in Part A of GST EWB 01.

A reg tax payer shall not be allowed to furnish details in part A of GST EWB-01, if :

Type	Failure to furnish
Composition	two consecutive period of 2 months
Other (Monthly or quarterly returns filers)	consecutive period of 2 months

Note: Commissioner may, on sufficient + reasons recorded in writing, allow furnishing of info in PART-A of FORM GST EWB 01+ reasonable opportunity of being heard before rejecting the same.

Changes in CGST Rules 2017

Order for payment of self assessed tax and interest thereon to be updated in form DRC-07

- Any order under sec 75 (12) for recovery of tax & interest on self-assessed tax shall be uploaded by proper officer in the form GST-DRC 07.
- Sec 75 (12) of CGST Act provides that *where any amount of self assessed tax in accordance with the Return filed under sec 39 or int thereon remains unpaid, it shall be liable to be recovered irrespective of time limit or any other provisions contained in provisions to sec 73 and/or 74.*
- There was no provision as to the manner in which order passed by proper officer has to be uploaded.
- **Now, it has been provided - summary of order passed by proper officer shall be uploaded in form DRC-07 & it shall be treated as notice for recovery.**

Changes in CGST Rules 2017

Notice by Revisional authority (RA)

- RA is an “authority appointed or authorised for revision of any erroneous decision or orders passed by any officer subordinate to him”
- It has been inserted by way of Rule 109B that :
 - where RA decides to pass an order in revision which is likely to affect the person adversely,
 - RA shall serve notice in FORM GST RVN-01
 - To give him a reasonable opportunity of being heard.
 - RA shall issue summary of order GST APL-04 clearly indicating the final amount of demand confirmed.

(Note: Format of FORM GST RVN-01 and FORM GST APL-04 have been provided by way of Notification 74/2018-Central tax)

Changes in CGST Rules 2017

Circular No. 90/09/2019-GST dated 18.02.2019

Compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply

- All reg persons making supply of goods or services or both in the course of **inter-State** trade or commerce need to **mandatorily specify in in the tax invoice in terms of rule 46(n)**:
 1. Place of supply
 2. Name of the State
- Contravention attracts penal action under sec 122 or 125 of the CGST Act- Rs.25,000/-

Changes in CGST Rules 2017

- **Changes in Refund provisions**

- Heading of Rule 96A changed to 'Export of goods or services under bond or letter of undertaking' from "Refund of integrated tax paid on export"
- Payment received in INR shall also qualify as export of services

Rule	Order/Advice	Form	Revalidation Requirement	conditions
Rule 91 & 92	Order issued	Form GST RFD - 04 / 06	Revalidation not required	NA
Rule 91 & 92	Payment Advice	Form GST RFD - 05	Revalidation required	Where refund not disbursed in same FY in which payment advice issued.

Changes in CGST Rules 2017

Transfer of credit on separate registrations for multiple places of business within a State or Union territory

- A registered person who has **obtained separate registration** for **multiple places** of business **within the same state/ UT** and who intends to **transfer**, either wholly or partly.
- The un-utilised ITC lying in his ECL to any or all of the newly reg place of business.
- Furnish FORM GST ITC-02A within 30 days from obtaining such separate registrations.
- ITC be transferred to newly registered entities in ratio of value of assets held by them at the time of registration.

Changes in CGST Rules 2017

- **Registration status to remain suspended during the process of cancellation of registration**
 - **Sub-rule 1:** Registration shall be deemed to have been suspended from the date of application under Rule 20 or the date from which cancellation is sought, *whichever is later*.
 - **Sub-rule 2:** Where proper officer has reason to believe that the registration of a person is liable to be cancelled, he may suspend the registration of such person *w.e.f. a date to be determined by him*.
 - **Sub-rule 3:** Persons covered under sub-rule 1 & 2, cannot make any taxable supplies during period of suspension and *need not file GST returns*.
 - **Sub-rule 4:** Where it is finally determined that the registration is not required to be cancelled under rule 22, the suspension of registration is also *deemed to be revoked*. Date of revocation would be effective date of suspension

Changes in CGST Rules 2017

- **Consolidated Credit Note / Debit Note against multiple invoices**
 - Registered persons can now issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year and vice-versa.
 - Consequently amendment has also been made in the rules by inserting a new rule 53(1A) to enumerate the contents of the consolidated debit/credit notes.
 - *Yet not effective on GSTN portal!*

Changes in CGST Rules 2017

- **Change in provisions relating to GST practitioner *(To be effective from Feb 1, 2019)***
 - The time limit for passing the examination has been increased from 18 months to 30 months
 - The scope of the activities that can be undertaken by the GST practitioner has been widened to include the following:
 - a. Furnish information for generation of e-way bill;
 - b. Furnish details of challan in FORM GST ITC-04;
 - c. Application for amendment or cancellation of enrolment under rule 58;
 - d. Intimation/ withdrawal from the composition scheme.

Changes in rates and exemptions

Reduction in Tax rates

S. No	Description	Tax before 1-Jan-19	Tax after on or after 1-Jan-19
1	Transportation of passengers by air in respect of religious Pilgrimage facilitated by GOI (Kumaon Mandal Vikas Nigam Limited, Haj committee) under bilateral arrangements	18% (under residual category)	5% (<i>ITC of input services will only be available</i>)
2	Third Party insurance premium of "goods carriage"	18%	12%

Reduction in Tax rates (Contd..)

S.No	Description	Tax before 1 -Jan-19	Tax after on or after 1-Jan-19
3	Tax on Cinema Tickets of <i>less than</i> Rs.100/-	18%	12%
4	Tax on Cinema Tickets of more than Rs.100/-	28%	18%

Changes related to solar power generating system

Value of goods is deemed to be 70% in case of composite contracts

Case 1: Contract with bifurcation of value for goods and services

Description	Deemed value	Rate applicable on or after 1-Jan-19
Value of goods	50,00,000	Respective rates applicable
Value of services	50,00,000	

Case 2 Composite contract where no bifurcation provided

Description	Deemed value	Rate applicable on or after 1-Jan-19
Value of goods	70,00,000	5%
Value of services	30,00,000	18%

Other changes

Supply of food by educational institutions taxable at 5% only when supply is made by a third party on contract basis.

S.No	Supplies made by	Levy of tax
1	Educational institution to its students	Exempt
2	Third party on a contractual arrangement with such institutions	Taxable at the rate of 5%.

Note: This amendment is only clarificatory in nature. It intends to clarify that GST continues to be exempt on supply of food and drinks by an educational institution when provided by the institution itself to its students, faculty and staff.

New exemptions provided to services

- **Services supplied by banking company to Basic Saving Bank Deposit (BSBD)** account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) shall now be exempted from GST.
- **Guarantee services provided by CG/SG** to their PSU's on loans taken from banks now exempt from tax.
- Exemption provided to services supplied by **rehabilitation professionals.**

Exemptions withdrawn

Services provided by IIM's to its students by way of educational programmes

- With the enactment of the IIM Act, 2017 from 31.01.2018, the degrees/diploma awarded by the IIMs would be exempt by way of the **exemption entry No. 66** as IIM would qualify as an 'educational institution'.
- Further, there were contradictory advance rulings in this aspect due to the existence of the entry No. 67.
- Removal of the said entry will rest the dispute.

Clarifications

- **Cess under ST cannot be carried forward**
- Supply of old goods/scrap by Govt. departments to
 - Regd. Person – Recipient to pay under RCM
 - Unregd. Person – Govt. dept. to pay under Fwd charge
- Penalty u/s 73(11) is **not** invocable in case of delay in filing of GSTR 3B (10% of Tax or Rs. 10,000/-)
- Dr. notes/Cr. notes raised **post GST** pertaining to invoices raised **prior to GST**, the said documents to be raised @ applicable GST rate.
- TCS under IT Act to be included in value of supply under GST.
- Few others...

Clarifications

- Services by Asian Development Bank & International Finance Corporation
- CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail.
- Service of “printing of pictures” correctly covered under service code 998386 - “Photographic and videographic processing services” is being classified by trade under service code 998912 - “Printing and reproduction services of recorded media, on a fee or contract basis”. The two service codes attract different GST rate of 18% and 12% respectively and therefore wrong classification may lead to short payment of GST.

Changes in Place Of Supply

POS – Immovable property services provided in more than one state

Nature of supply of service	Place of supply
<p>Services (including ancillary services), provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, except cases where such property is a single property located in two or more contiguous States or Union territories or both.</p>	<p>In proportion of number of nights stayed.</p>

POS – Immovable property services provided in more than one state

Nature of supply of service	Place of supply
All other services in relation to immovable property such as...	In proportion to the area of the immovable property lying in each State or Union territory;
Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services,	In proportion to the time spent in the boat or vessel in such State or Union Territory

POS – Event services provided in more than one state

POS if :

- Services are provided to a person other than registered person
- Event is held in more than one state or union territory.
- A consolidated amount is charged for the supply of services.
- There is no clause in the agreement for determining the value of supply in each state or union territory.

POS shall be determined by application of generally accepted accounting principles (GAAP)

Note - the above provisions would, mutatis mutandis, applicable where either the location of supplier of services or location of recipient of services is outside India but the property is located in more than one State in India

POS – performance based services provided in more than one state

POS in case of performance based services where i)location of supplier or recipient is outside ii)goods are required to be made available as follows:

- If there is contract – POS shall be determined based on contract.
- In absence of contract

Nature of services	POS
Service supplied on same goods	By equally dividing value of service in each state.
Services supplied on different goods	In ratio of invoice value of goods in each of the State/UT (where service is performed)
Services supplied to individuals	By applying GAAP

POS – Telecommunication services provided in more than one state

Services relating to leased circuit, where services are attributable to different states:

In proportion to the number of points lying in the State or Union territory

Number of points in a circuit shall be determined :

- (i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;
- (ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

THANK YOU



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